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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/746,581	12/21/2000	Therese Jourdir	00,1287	1597

7590 07/02/2003

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EXAMINER

LUCAS, ZACHARIAH

ART UNIT	PAPER NUMBER
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1648

DATE MAILED: 07/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/746,581

Applicant(s)

JOURDIER ET AL.

Examiner

Zachariah Lucas

Art Unit

1648

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 December 2000.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-9 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Election/Restrictions*

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-5, 8, and 9, drawn to methods of producing a local immunological response against a pathogen in a buccal mucous membrane, wherein the pathogen is HIV, classified in class 424, subclass 208.1.
  - II. Claims 1-5, and 7, drawn to methods of producing a local immunological response against a pathogen in a buccal mucous membrane, wherein the pathogen is a herpesvirus, classified in class 424, subclass 229.1.
  - III. Claims 1-5, drawn to methods of producing a local immunological response against a pathogen in a buccal mucous membrane, wherein the pathogen is a candidae, classified in class 424, subclass 274.1.
  - IV. Claims 1-5, and 7, drawn to methods of producing a local immunological response against a pathogen in a buccal mucous membrane, wherein the pathogen is a hepatitis virus, classified in class 424, subclass 225.1.
  - V. Claims 1-5, and 7, drawn to methods of producing a local immunological response against a pathogen in a buccal mucous membrane, wherein the pathogen is a picornaviridae, classified in class 424, subclass 216.1.
  - VI. Claims 1-5, and 7, drawn to methods of producing a local immunological response against a pathogen in a buccal mucous membrane, wherein the pathogen is a reovirus, classified in class 424, subclass 215.1.

Art Unit: 1648

- VII. Claims 1-5, drawn to methods of producing a local immunological response against a pathogen in a buccal mucous membrane, wherein the pathogen is an adenovirus, classified in class 424, subclass 233.1.
- VIII. Claims 1-5, drawn to methods of producing a local immunological response against a pathogen in a buccal mucous membrane, wherein the pathogen is human papillomavirus, classified in class 424, subclass 204.1.
- IX. Claims 1-5, drawn to methods of producing a local immunological response against a pathogen in a buccal mucous membrane, wherein the pathogen is a cytomegalovirus, classified in class 424, subclass 230.1.
- X. Claims 1-5, drawn to methods of producing a local immunological response against a pathogen in a buccal mucous membrane, wherein the pathogen is an Epstein-Barr virus, classified in class 424, subclass 230.1.
- XI. Claims 1-5, and 6, drawn to methods of producing a local immunological response against a pathogen in a buccal mucous membrane, wherein the pathogen is an aerosol transmitted pathogen, classified in class 434, subclass 234.1.

**For Group XI above**, restriction to one of the following is also required under 35 USC 121. Therefore, election is required of one of Groups I-XI, and, if Group XI is elected, then election is also required to one of inventions (A)-(E). Subinventions (A)-(E) represent the inventions of Group XI wherein the aerosol transmitted pathogen is selected from:

- (A) M. tuberculosis;
- (B) N. meningitides;
- (C) Streptococcus type B;
- (D) S. pneumoniae; or
- (E) B. pertussis.

The inventions are distinct, each from the others, for the following reasons:

Art Unit: 1648

2. The inventions of Groups (A)-(E), and of I-XI are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case, the different inventions each describe methods of inducing a local immune response against a different pathogenic organism. They therefore perform different functions.

### *Conclusion*

3. Because these inventions are distinct for the reasons given above, have acquired a separate status in art because of recognized divergent subject matter and different classifications, and because the literature and sequence searches required for any one of the groups is not required for the others, restriction for examination purposes as indicated is proper.

4. It is here noted that some of the restrictions requirements made above fall within the scope of PTO Linking claim practice. In accordance with this practice as described in MPEP 809.03, linking claims will be considered with the elected invention. If the elected invention is found allowable, the linking claim will also be examined. If no substantive rejection is found for the linking claim, the restriction among the Groups it comprises will be withdrawn.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the


Art Unit: 1648


application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zachariah Lucas whose telephone number is 703-308-4240. The examiner can normally be reached on Monday-Friday, 8 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on 703-308-4027. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

  
Z. Lucas  
Patent Examiner  
June 26, 2003

  
JAMES HOUSEL 6/30/03  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600